

AMENDED IN ASSEMBLY JULY 6, 2000

AMENDED IN ASSEMBLY JUNE 21, 2000

AMENDED IN SENATE JULY 14, 1999

AMENDED IN SENATE JUNE 24, 1999

AMENDED IN SENATE JUNE 21, 1999

AMENDED IN SENATE JUNE 14, 1999

SENATE BILL

No. 1146

Introduced by Senator Burton
(Principal coauthor: Senator Polanco)
(Coauthors: Senators Escutia, Haynes, and Karnette)
(Coauthors: Assembly Members Baugh, Cardoza, and
Granlund)

February 26, 1999

An act to amend Section 43104 of, and to add Sections 39027.3 and 43105.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as amended, Burton. Motor vehicles: pollution control devices.

Existing law authorizes the State Air Resources Board to adopt and implement emission standards for new motor vehicles to control emissions from those vehicles.

This bill would require the state board, for all 1994 and later model-year motor vehicles that are equipped with on board diagnostic systems and that are certified in accordance with

specified test procedures, to adopt regulations that would require motor vehicle manufacturers to take specified actions to make available information relating to motor vehicle emissions monitoring and testing, and diagnostic systems, as prescribed. The bill would provide for the imposition of reasonable business conditions as a condition of the disclosure of information determined to be a trade secret, and would authorize a court to issue a protective order concerning that information.

The bill would require the executive officer of the state board, if he or she obtains credible evidence of a motor vehicle manufacturer's failure to comply with any of the requirements imposed by those regulations, to issue a notice of noncompliance to the manufacturer. The bill would permit the motor vehicle manufacturer to request a public hearing before the state board to contest the notice of noncompliance within a specified time period. The bill would authorize the state board, if the motor vehicle manufacturer fails to correct the violation within 30 days from the date of the state board finding, to impose a civil penalty on the manufacturer in an amount up to \$25,000 per day per violation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and
2 declares all of the following:
3 (a) There are over 26 million registered motor
4 vehicles in California, and those vehicles are relied upon
5 heavily by California residents to conduct their everyday
6 activities.
7 (b) The use of those motor vehicles results in hundreds
8 of tons of pollutants being emitted into California's air
9 every day, significantly affecting air quality and public
10 health and safety. To prevent unnecessary pollution, it is
11 in the best interests of this state to ensure that the ability
12 of California motorists to obtain service, repair, or
13 replacement of faulty emissions-related components of
14 their motor vehicles is not limited by the arbitrary



1 withholding of service, repair, or parts information by
2 motor vehicle manufacturers.

3 (c) Recent emissions standards adopted and
4 implemented by the State Air Resources Board for motor
5 vehicles manufactured after 1993 have resulted in the
6 development by vehicle manufacturers of “on board
7 diagnostic computers,” that interface with the many
8 component parts of a vehicle’s emissions control system.
9 Essential service, repair, and parts information and tools
10 for interfacing with a vehicle’s on board diagnostic
11 computer system may not be readily available to
12 independent automotive repair technicians and facilities.
13 Accordingly, consumers may be restricted to having the
14 service and repair of faulty emissions-related components
15 of a motor vehicle performed only by franchised
16 dealerships, and consumers may be also forced to
17 purchase replacement parts manufactured solely by or on
18 behalf of the vehicle manufacturer. This restriction of
19 consumer choice and options is contrary to the history of
20 automotive repair, which saw the advent of independent
21 repair technicians and facilities and independent
22 aftermarket parts manufacturers as healthy market
23 competitors to vehicle manufacturers and their
24 dealerships.

25 (d) The withholding of essential service, repair, and
26 parts information and tools by vehicle manufacturers
27 from independent automotive repair technicians and
28 independent aftermarket parts manufacturers may result
29 in improper and needlessly costly repairs that could also
30 endanger the public and result in anticompetitive effects
31 harmful to the best interests of the state.

32 (e) It is the intent of the Legislature in enacting this
33 act during the 2000 portion of the 1999–2000 Regular
34 Session to assure and stimulate competition in the service
35 and repair of motor vehicles, including emissions systems,
36 and in the availability of parts for those repairs. Further,
37 it is the important policy of this state to encourage
38 competition so that consumers have choices available to
39 them in the service, repair, and parts used in the service
40 or repair of motor vehicles.

1 SEC. 2. Section 39027.3 is added to the Health and
2 Safety Code, to read:

3 39027.3. (a) “Bidirectional control” means the
4 capability of a diagnostic tool to send messages on the data
5 (bus) that temporarily overrides the module’s control
6 over a sensor or actuator and gives control to the
7 diagnostic tool operator. Bidirectional controls do not
8 create permanent changes to engine or component
9 calibrations.

10 (b) “Covered person” means any person engaged in
11 the business of service or repair of motor vehicles who is
12 licensed *or registered* by the Bureau of Automotive
13 Repair to conduct that business, or who is engaged in the
14 manufacture or remanufacture of emissions-related
15 motor vehicle parts for those motor vehicles.

16 (c) “Data stream information” means information
17 that originates within the vehicle by a module or
18 intelligent sensors including, but not limited to, a sensor
19 that contains and is controlled by its own module and
20 transmitted between a network of modules and
21 intelligent sensors connected in parallel with either one
22 or two communication wires. The information is
23 broadcast over communication wires for use by other
24 modules such as chassis or transmissions to conduct
25 normal vehicle operation or for use by diagnostic tools.
26 Data stream information does not include engine
27 calibration-related information.

28 (d) “Emissions-related motor vehicle information”
29 means information regarding any of the following:

30 (1) Any original equipment system, component, or
31 part that controls emissions.

32 (2) Any original equipment system, component, or
33 part associated with the powertrain system including, but
34 not limited to, the fuel system and ignition system.

35 (3) Any original equipment system or component that
36 is likely to impact emissions, including, but not limited to,
37 the transmission system.

38 (e) “Emissions-related motor vehicle part” means any
39 ~~automotive part that affects or that may affect emissions~~
40 *direct replacement automotive part or any automotive*

1 *part certified by executive order of the state board that*
2 *may affect emissions* from a motor vehicle, including
3 replacement parts, consolidated parts, rebuilt parts,
4 remanufactured parts, add-on parts, modified parts, and
5 specialty parts.

6 (f) “Enhanced ~~information~~” ~~means~~ *data stream*
7 *information*” means *data stream* information that is
8 specific for an original equipment manufacturer’s brand
9 of tools and equipment.

10 (g) “Enhanced diagnostic tool” means a diagnostic
11 tool that is specific to the original equipment
12 manufacturer’s vehicles.

13 SEC. 3. Section 43104 of the Health and Safety Code
14 is amended to read:

15 43104. For the certification of new motor vehicles or
16 new motor vehicle engines, the state board shall adopt, by
17 regulation, test procedures and any other procedures
18 necessary to determine whether the vehicles or engines
19 are in compliance with the emission standards established
20 pursuant to Section 43101. The state board shall base its
21 test procedures on federal test procedures or on driving
22 patterns typical in the urban areas of California.

23 SEC. 4. Section 43105.5 is added to the Health and
24 Safety Code, to read:

25 43105.5. (a) For all 1994 and later model-year motor
26 vehicles equipped with on board diagnostic systems
27 (OBD’s) and certified in accordance with the test
28 procedures adopted pursuant to Section 43104, the state
29 board, not later than January 1, ~~2001~~—2002, shall adopt
30 regulations that require a motor vehicle manufacturer to
31 do all of the following ~~for fair, reasonable, and~~
32 ~~nondiscriminatory compensation~~, to the extent not
33 limited or prohibited by federal law (the regulations
34 adopted by the state board pursuant to this provision may
35 include subject matter similar to the subject matter
36 included in regulations adopted by the United States
37 Environmental Protection Agency):

38 (1) Make available, within a reasonable period of time,
39 ~~at a fair, reasonable, and nondiscriminatory price~~, and by
40 reasonable business means, *including, but not limited to,*

1 *use of the Internet*, as determined by the state board, to
2 all covered persons, the full contents of all manuals,
3 technical service bulletins, and training materials
4 regarding emissions-related motor vehicle information
5 that is made available to their franchised dealerships.

6 (2) Make available for sale to all covered persons the
7 ~~manufacturer's enhanced diagnostic tools, and make~~
8 *manufacturer's emissions-related enhanced diagnostic*
9 *tools, and make emissions-related* enhanced data stream
10 information and bidirectional controls related to tools
11 available in electronic format to equipment and tool
12 companies.

13 (3) If the motor vehicle manufacturer uses
14 reprogrammable computer chips in its motor vehicles,
15 provide equipment and tool companies with the
16 information that is provided by the manufacturer to its
17 dealerships to allow those companies to incorporate into
18 aftermarket tools the same reprogramming capability.

19 (4) Make available to all covered persons, within a
20 reasonable period of time, a general description of their
21 on board diagnostic systems (OBD II) for the 1996 and
22 subsequent model-years, which shall contain the
23 information described in this paragraph. For each
24 monitoring system utilized by a manufacturer that
25 illuminates the OBD II malfunction indicator light, the
26 motor vehicle manufacturer shall provide all of the
27 following:

28 (A) A general description of the operation of the
29 monitor, including a description of the parameter that is
30 being monitored.

31 (B) A listing of all typical OBD II diagnostic trouble
32 codes associated with each monitor.

33 (C) A description of the typical enabling conditions for
34 each monitor to execute during vehicle operation,
35 including, but not limited to, minimum and maximum
36 intake air and engine coolant temperature, vehicle speed
37 range, and time since engine startup.

38 (D) A listing of each monitor sequence, execution
39 frequency, and typical duration.



1 (E) A listing of typical malfunction thresholds for each
2 monitor.

3 (F) For OBD II parameters for specific vehicles that
4 deviate from the typical parameters, the OBD II
5 description shall indicate the deviation and provide a
6 separate listing of the typical value for those vehicles.

7 (G) The information required by this paragraph shall
8 not include specific ~~vehicle algorithms, specific vehicle~~
9 ~~software codes algorithms, specific software code,~~ or
10 specific calibration data beyond that ~~available on Mode~~
11 ~~\$06 of the SAE J1979 Generic Scan Tool. required to be~~
12 *made available through the generic scan tool in federal*
13 *and California on board diagnostic regulations.*

14 (5) Not utilize any access or recognition code or any
15 type of encryption for the purpose of preventing a vehicle
16 owner from using an emissions-related motor vehicle part
17 with the ~~exception of the emissions-related on board~~
18 ~~diagnostic system exception of the powertrain control~~
19 *modules, engine control modules, and transmission*
20 *control modules,* that has not been manufactured by that
21 manufacturer or any of its original equipment suppliers.

22 (6) Provide *to all covered persons* information
23 regarding initialization procedures relating to
24 immobilizer circuits or other lockout devices to
25 reinitialize vehicle on board computers that employ
26 integral vehicle security systems if necessary to repair or
27 replace an emissions-related part, or if necessary for the
28 proper installation of vehicle on board computers that
29 employ integral vehicle security systems.

30 (7) All information required to be provided to covered
31 persons by this section shall be provided, *for fair,*
32 *reasonable, and nondiscriminatory compensation,* in a
33 format that is readily accessible to all covered persons, as
34 determined by the state board.

35 (b) Any information required to be disclosed *pursuant*
36 *to a final regulation adopted* under this section that the
37 motor vehicle manufacturer demonstrates to a court, on
38 a case-by-case basis, to be a trade secret pursuant to the
39 Uniform Trade Secret Act contained in Title 5
40 (commencing with Section 3426) of Part 1 of Division 4

1 of the Civil Code, shall be exempt from disclosure, unless
2 the court, upon the request of a covered person seeking
3 disclosure of the information, determines that the
4 disclosure of the information is necessary to mitigate
5 anticompetitive effects. In making this determination,
6 the court shall consider, among other things, the practices
7 of any motor vehicle manufacturer that results in the
8 fullest disclosure of information listed in paragraph (4) of
9 subdivision (a). In actions subject to this subdivision, the
10 court shall preserve the secrecy of an alleged trade secret
11 by reasonable means, which may include granting a
12 protective order in connection with discovery
13 proceedings, holding an in-camera hearing, sealing the
14 record of the action, or ordering any person involved in
15 the litigation not to disclose an alleged trade secret
16 without prior court approval.

17 (c) If information is required to be disclosed by a
18 motor vehicle manufacturer pursuant to subdivision (b),
19 the court shall allow for the imposition of reasonable
20 business conditions as a condition of disclosure, and may
21 include punitive sanctions for the improper release of
22 information that is determined to be a trade secret to a
23 competitor of the manufacturer. The court shall also
24 provide for fair, reasonable, and nondiscriminatory
25 compensation to the motor vehicle manufacturer for the
26 disclosure of information determined by the court to be
27 a trade secret and required to be disclosed pursuant to
28 subdivision (b). The court shall provide for the
29 dissemination of trade secret information required to be
30 disclosed pursuant to subdivision (b) through licensing
31 agreements and the collection of reasonable licensing
32 fees. If the court determines that disclosure of any of the
33 information required to be disclosed under subdivision
34 (b) constitutes a taking of personal property, a jury trial
35 shall be held to determine the amount of compensation
36 for that taking, unless waived by the motor vehicle
37 manufacturer.

38 (d) The state board shall periodically conduct surveys
39 to determine whether the information requirements



1 imposed by this section are being fulfilled by actual field
2 availability of the information.

3 (e) If the executive officer of the state board obtains
4 credible evidence that a motor vehicle manufacturer has
5 failed to comply with any of the requirements of this
6 section or the regulations adopted by the state board, the
7 state board shall issue a notice to the manufacturer
8 warning of that noncompliance. The vehicle
9 manufacturer may request a public hearing before the
10 state board within 30 days from the date of the notice of
11 violation to contest that notice of violation. If, after the
12 hearing, the state board finds that the motor vehicle
13 manufacturer has failed to comply with any of the
14 requirements of this section or the regulations adopted by
15 the state board, and the manufacturer fails to correct the
16 violation within 30 days from the date of the state board
17 finding, the state board shall impose a civil penalty on the
18 manufacturer in an amount up to twenty-five thousand
19 dollars (\$25,000) per day per violation until the violation
20 is corrected. The state board may provide additional time
21 for compliance prior to imposing a civil penalty if the
22 state board determines that the violation cannot be
23 remedied within 30 days of the state board's finding that
24 a violation has occurred.

25 (f) The Department of Consumer Affairs, in
26 coordination with the state board and the Bureau of
27 Automotive Repair, shall, through the year 2009, report
28 annually to the Legislature on the extent to which the
29 implementation of this act enacted during the 2000
30 portion of the 1999–2000 Regular Session is effective in
31 furthering the intent and policy contained in Section 1 of
32 this act.

33 (g) Nothing in this section is intended to authorize the
34 infringement of intellectual property rights embodied in
35 United States patents, trademarks, or copyrights, to the
36 extent those rights may be exercised consistently with
37 any other federal laws.

